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LOS ANGELES  
SUPERIOR COURT

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GERALD ARMSTRONG CORPORATION

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES

CHURCH OF SCIENTOLOGY )  
INTERNATIONAL, a California )  
not-for-profit religious )  
corporation; )

Plaintiff, )

vs. )

GERALD ARMSTRONG; THE GERALD )  
ARMSTRONG CORPORATION, a )  
California corporation; DOES )  
1-25, inclusive; )

Defendants. )

Case No. BC 084 642

MEMORANDUM OF POINTS  
AND AUTHORITIES IN SUPPORT  
OF SPECIAL MOTION TO STRIKE

Date: October <sup>6</sup> 1993  
Time: 8:30 ~~9:00~~ a.m.  
Dept: ~~AD~~ 30

Discovery Cut Off: None  
Motion Cut Off: None  
Trial Date: None

COPY

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1 **I. INTRODUCTION.**

2  
3 The first amended complaint in this case ("Armstrong III")  
4 - an effort to enforce that certain settlement contract of  
5 December 6, 1986 - precisely duplicates an action that is  
6 presently pending before, and has been stayed by, Department 30 of  
7 this Court. <sup>1/</sup> Indeed, the instant lawsuit appears to be a  
8 transparent effort to circumvent the stay in Armstrong II that was  
9 issued by the Honorable David A. Horowitz on March 23, 1993, <sup>2/</sup>

10  
11 <sup>1</sup> That action is styled Church of Scientology  
12 International v. Armstrong, Case No. BC 052395, hereinafter  
13 referred to as "Armstrong II." (Complaint, Exhibit A-1,  
14 incorporated herein by reference.) Armstrong II includes a cross-  
complaint brought by Armstrong against plaintiff herein.  
Scientology's original case against defendant Armstrong is  
addressed in footnote 8, infra.

15 <sup>2</sup> In his Order granting Armstrong's motion for a stay,  
16 Judge Horowitz found that the "legality and validity of the  
Agreement" is the "central issue" in Armstrong II. Thus, he held  
as follows:

17 "D, Mot for stay of proceedings GRANTED. The action is stayed  
18 under CCP 916. Counsel are ordered to report any decision by the  
Court of Appeal to this Department, in writing, within one day of  
19 the issuance of the opinion so that this Court may lift the stay.  
". . . an appeal stays proceedings in the trial court upon  
20 the . . . order appealed from or upon the matters embraced therein  
or affected thereby . . ." CCP 916. As the Church has stated in  
21 its Summary Adjudication motions, "The facts are undisputed,  
however, that Armstrong has breached the Agreement repeatedly and  
22 deliberately. Because of these breaches, a preliminary injunction  
was issued by the Court on May 28, 1992." Obviously, the validity  
23 of the Agreement is the basis for the preliminary injunction. One  
of the basis for the appeal is an attack on the legality and  
validity of the agreement.

24 The central issue of this case is the legality and validity  
25 of the Agreement. The Court of Appeal could certainly reach that  
issue in its determination of the validity of the injunction. If  
26 it does, that ruling could be determinative of many of the issues  
of this case. It makes no sense to proceed with this matter until  
the Court of Appeal makes its ruling.

27 Any and all matters set in this department, including but not  
28 limited to the Motions set for 3/31/93, the Final Status

(continued...)



1 pending the resolution by the Second District Court of Appeal <sup>3/</sup>  
2 of the question whether or not the provisions of the contract that  
3 Scientology seeks to enforce are illegal and unenforceable. <sup>4/</sup>

4 Not satisfied to await the ruling by the Court of Appeal and  
5 in an effort to litigate a second lawsuit that duplicates one  
6 which is pending in this Court, but stayed, Scientology has filed  
7 the instant action.

8 Not only is the instant action an improper effort to  
9 circumvent the Court's stay in Armstrong II, it is also a  
10 retaliatory and retributive action for Armstrong's exercise of his  
11 First Amendment right to free speech and right to redress for  
12 successfully staying Armstrong II and filing a declaration on  
13 behalf of litigant defendant Larry Wollersheim in Church of  
14 Scientology of California v. Wollersheim, Los Angeles County  
15 Superior Court Case No. BC 074 815. (Armstrong Decl. Ex B.)

16 The action should have been filed as a supplemental complaint  
17 in Armstrong II, is improper, without merit, and filed to further

18 \_\_\_\_\_  
19 <sup>2</sup>(...continued)

20 Conference of 4/23/93 and the Trial of 5/3/93, are each advanced  
21 and vacated.

22 Defendant shall give notice."

23 (Minute Order 3/23/93, Exhibit A-2, incorporated herein by  
24 reference.)

25 <sup>3</sup> In Armstrong II, Scientology first sought the injunctive  
26 relief that it seeks in the instant case. Partial injunctive  
27 relief was granted by the Honorable Ronald M. Sohigian on May 28,  
1992. (Exhibit A-3 incorporated herein by reference.)  
While Scientology has not appealed Judge Sohigian's injunction,  
Armstrong has in Second District Court of Appeal Case No. B 069  
450. (Notice of Appeal, Exhibit A-4 incorporated herein by  
reference.) The appeal has been fully briefed and the parties  
await the scheduling of oral argument.

28 <sup>4</sup> See substance of Department 30's stay order, set forth  
in full at footnote 2, above.



1 to further harass defendant. Because it arises from defendant's  
2 exercise of his First Amendment right to petition the government,  
3 and to freely speak about Scientology's malevolent litigation and  
4 antisocial practices, this action is subject to a special motion  
5 to strike under Code of Civil Procedure § 425.16, <sup>5</sup>/ which should  
6 be granted for the reasons set forth below.

7  
8 **II. THIS SPECIAL MOTION TO STRIKE IS AUTHORIZED BY § 425.16.**

9  
10 Recognizing the potential chilling effect of lawsuits brought  
11 primarily for the purpose of curbing the valid exercise of the  
12 constitutional rights of petition or freedom of speech, <sup>6</sup>/ the  
13 California Legislature last year added § 425.16 to the Code of  
14 Civil Procedure. Effective January 1, 1993, the section specifies  
15 that an action arising from a defendant's exercise of the  
16 constitutional right to petition the government shall be subject  
17 to a motion to strike unless the plaintiff can show a  
18 "probability" of success on the merits. <sup>7</sup>/

19  
20 <sup>5</sup> Subsequent section references are to the Code of Civil  
Procedure, unless otherwise noted.

21 <sup>6</sup> The purpose of the legislation is set forth in its first  
22 subsection: "The Legislature finds that there has been a  
23 disturbing increase in lawsuits brought primarily to chill the  
24 valid exercise of the constitutional rights of freedom of speech  
25 and petition for redress of grievances. The Legislature also  
finds and declares that it is in the public interest to encourage  
continued participation in matters of public significance, and  
that this participation should not be chilled through abuse of the  
judicial process." (§ 425.16(a).)

26 <sup>7</sup> Section 425.16(b) provides, in pertinent part: "A cause  
27 of action arising from any act of that person in furtherance of  
the person's right of petition or free speech in connection with a  
public issue shall be subject to a special motion to strike,  
28 (continued...)



1 Plaintiff's complaint against defendant falls squarely within  
2 § 425.16. The complaint duplicates litigation that is already  
3 pending, but stayed, in this Court. During the pendency of said  
4 stay, defendant has continued to exercise his right to free speech  
5 by speaking out against Scientology in the national media, and by  
6 meeting with persons opposed to Scientology's antisocial practices  
7 and sharing information with them. The petition and free speech  
8 activity which is protected by this new statute includes "any oral  
9 statement or writing made in connection with an issue under  
10 consideration or review by a ... judicial body ... or any written  
11 or oral statement or writing made in a place open to the public or  
12 a public forum in connection with an issue of public interest."  
13 (§ 425.16(e).) This surely includes defendant Armstrong's making  
14 statements which pertain to his extensive and first-hand knowledge  
15 of Scientology's penchant for fraud, use of the legal system for  
16 the purpose of destruction, and compulsion to engage in "fair  
17 game" activity to punish its perceived enemies. <sup>8</sup>/ Therefore,

18  
19 <sup>7</sup>(...continued)  
20 unless the court determines that the plaintiff has established  
21 that there is a probability that the plaintiff will prevail on the  
22 claim."

23 <sup>8</sup> According to the Fair Game Policy, such persons upon  
24 whom it is imposed, "[m]ay be deprived of property or injured by  
25 any means by any Scientologist without any discipline of the  
26 Scientologist. May be tricked, sued or lied to or destroyed."  
27 (Hart v. Cult Awareness Network (1993) 16 Cal.Rptr.2d 705, 707;  
28 Allard v. Church of Scientology of California (1976) 58 Cal.App.3d  
439, 443, fn. 1; Wollersheim v. Church of Scientology (1989) 212  
Cal.App.3d 872, 880, 888-889, 893-894, pet. for cert. granted,  
vacated and remanded on other grounds, 111 S.Ct. 1298 (1991);  
aff'd on remand 4 Cal.App.4th 1074 (1992); review granted S011790  
(1992) and dismissed (1993); See also United States v. Kattar  
(1st Cir.1988) 840 F.2d 118, 125; Van Schaick v. Church of  
Scientology (U.S.D.C. Mass.1982) 535 F.Supp. 1125, 1131 n.4;  
Christoffersen v. Church of Scientology (1982) 57 Ore.App. 203,  
(continued...)



1 defendant brings this timely <sup>9</sup>/ special motion to strike.

2 The preliminary allegations of Armstrong III (page 1:20-3:15,  
3 5:11-6:18) substantially track and duplicate those of Armstrong II  
4 (Complaint, Ex. A-1 at pp. 1:21-3:19, 4:1-6:26.) Likewise,  
5 Armstrong III's first cause of action (pp. 6:19-7:21) duplicates  
6 Armstrong II's third cause of action (Armstrong's working for Ford  
7 Greene who sues Scientology on behalf of individuals whom it has  
8 injured violates the settlement contract, Complaint, Ex. A-1, pp.  
9 9:13-10:8.)

10 Armstrong III's second cause of action (pp. 7:22-8:26) states  
11 that Armstrong attended a convention of the Cult Awareness Network

12 <sup>8</sup>(...continued)  
13 644 P.2d 577, 590-92; Church of Scientology v. Commissioner of  
14 Internal Revenue (1984) 83 T.C. 381, 411-12, aff'd, 823 F.2d 1310  
(9th Cir. 1987).

15 Specifically, as to defendant Armstrong, in Armstrong I,  
16 styled Church of Scientology of California v. Armstrong, Los  
17 Angeles Superior Court Action No. C 420153, the Honorable Paul G.  
18 Breckenridge, Jr., found that Scientology practiced "fair game"  
19 against its enemies. He found:

20 "In addition to violating and abusing its own members civil  
21 rights, the organization over the years with its "Fair Game"  
22 doctrine has harassed and abused those persons not in the Church  
23 whom it perceives as enemies. The organization is clearly  
24 schizophrenic and paranoid, and this bizarre combination seems to  
25 be a reflection of its founder LRH [L. Ron Hubbard]. The evidence  
26 portrays a man who has been virtually a pathological liar when it  
27 comes to his history, background, and achievements. The writings  
28 and documents in evidence additionally reflect his egoism, greed,  
avarice, lust for power, and vindictiveness and aggressiveness  
against persons perceived by him to be disloyal or hostile."

(Exhibit B-3 at pp. 8:24-9:4, incorporated herein by reference.)  
affirmed on appeal, Church of Scientology of California v.  
Armstrong (1991) 232 Cal.App.3d 1060, 283 Cal.Rptr. 917 [Gerald  
Armstrong declared suppressive person, labelled an enemy of the  
church and subjected to fair game policy].

<sup>9</sup> This special motion has been filed within 60 days of  
service of the complaint, as provided in § 425.16(f). Armstrong  
was served with the summons and complaint on or about July 30,  
1993. (Armstrong Decl. Ex. 2 at ¶ 2.)



1 ("CAN") <sup>10</sup>/ and provided a videotape to a conference attendee  
2 wherein Armstrong detailed some of the illegal ventures he  
3 perpetrated while a Scientologist and at the direction of his  
4 Scientologist superiors. Scientology has already made this  
5 feature of Armstrong's conduct an issue in Armstrong II by asking  
6 Department 86, the Honorable Diane Wayne Presiding, to find  
7 Armstrong in contempt for having engaged in it. (Application for  
8 Order to Show Cause, Bartilson Decl., Exhibit A-5, at ¶¶ 17, 21, &  
9 22, incorporated herein by reference.) Judge Wayne, however,  
10 declined such invitation. Instead, she chose to await the ruling  
11 of the Court of Appeal on Armstrong's appeal of Judge Sohigian's  
12 injunction. (Transcript, Exhibit A-6, at pp. 1, 5-6, incorporated  
13 herein by reference.)

14 Armstrong III's third cause of action is predicated on a  
15 letter that Armstrong wrote on December 22, 1992. Said letter was  
16 the subject of the same contempt proceeding in Armstrong II which  
17 Scientology brought before the Honorable Diane Wayne.  
18 (Application for Order to Show Cause, Bartilson Decl., Exhibit A-  
19 5, at ¶¶ 13-16, incorporated herein by reference.) Judge Wayne  
20 deferred ruling on the order to show cause until Armstrong's  
21 appeal had been concluded. (Transcript, Exhibit A-6, at pp. 1, 5-  
22 6, incorporated herein by reference.)

23  
24 <sup>10</sup> Contrary to Scientology's characterization of CAN as "an  
25 anti-religious group whose members advocate kidnapping and  
26 'deprogramming' of persons belonging to groups which they label  
27 'cults'" (First Amended Complaint at pp. 7:27-8:2), the Second  
28 District Court of Appeal has described CAN as follows:  
"CAN-National is a nonprofit corporation; its purpose is to  
educate the public about the harmful effects of mind control as  
practiced by destructive cults and about the unethical or illegal  
practices they employ." (Hart v. Cult Awareness Network, supra,  
16 Cal.Rptr.2d at 706.)



1 Armstrong III's fourth (speaking at a public gathering),  
2 fifth (giving an interview to Newsweek magazine about Scientology)  
3 and sixth causes (appearance on a radio talk show to discuss  
4 Scientology) of action are all predicated upon Armstrong's  
5 engaging in protected First Amendment activity.

6  
7 **III. THIS MOTION SHOULD BE GRANTED BECAUSE**  
8 **PLAINTIFF CANNOT DEMONSTRATE A PROBABILITY**  
9 **THAT IT WILL PREVAIL ON ITS CLAIMS.**

10 As demonstrated below, plaintiff cannot meet its burden of  
11 establishing a probability <sup>11/</sup> that it will prevail on the merits  
12 of its claims, as required by § 425.16(b). <sup>12/</sup> Therefore, this  
13 special motion to strike should be granted.

14 **A. THIS COURT HAS NO JURISDICTION OVER THIS ACTION**  
15 **BECAUSE THE MAIN ACTION IS PENDING IN ANOTHER**  
16 **DEPARTMENT OF THIS COURT AND BEFORE THE COURT**  
17 **OF APPEAL.**

18 The special motion to strike should be granted because  
19 Armstrong II is currently pending both before Department 30 of  
20 this Court, which has issued a stay, and the Court of Appeal,

21 <sup>11</sup> "Probable" is synonymous with "likely", and  
22 "probability" is synonymous with "likelihood". (Walbrook  
23 Insurance v. Liberty Mutual Insurance (1992) 5 Cal.App.4th 1445,  
24 1461, 7 Cal.Rptr.2d 513; see also Black's Law Dictionary (Rev.4th  
25 Ed. 1968) p.1364 ["probability" means "likelihood"].) "A  
'probable' consequence is one more likely to follow its cause than  
not..." (Bastian v. County of San Luis Obispo (1988) 199  
Cal.App.3d 520, 533, 245 Cal.Rptr. 78.)

26 <sup>12</sup> Unlike a demurrer, where the Court is limited to  
27 considering matters appearing on the face of the complaint (or  
28 matters of which judicial notice is taken), on a § 425.16 special  
motion to strike, the Court "shall consider the pleadings, and  
supporting and opposing affidavits stating the facts upon which  
the liability or defense is based." (§ 425.16(b).)



1 which will rule on enforceability of the provisions of the  
2 settlement contract which Armstrong, in Armstrong II, asserts are  
3 illegal. Armstrong will assert the same defenses to this action as  
4 he has asserted in Armstrong II.

5 One department of the Superior Court cannot enjoin or  
6 otherwise interfere with the judicial act of another department in  
7 the same court. (Elsea v. Saberi (1992) 4 Cal.App.4th 625, 631, 5  
8 Cal.Rptr.2d 742.) In Elsea, the court held:

9 "A superior court is but one tribunal, even if it be  
10 composed of numerous departments . . . . An order made in  
11 one department during the progress of a cause can  
12 neither be ignored nor overlooked in another department  
13 ...." (Sandco American, Inc. v. Notrica (1990) 216  
14 Cal.App.3d 1495, 1508, 265 Cal.Rptr. 578, citation and  
15 internal quotation marks omitted.) "[W]here a  
16 proceeding has been ... assigned for hearing and  
17 determination to one department of the superior court  
18 ... it is beyond the jurisdictional authority of another  
19 department of the same court to interfere with the  
20 exercise of the power of the department to which the  
21 proceeding has been so assigned .... If such were not  
22 the law, conflicting adjudications of the same subject-  
23 matter by different department of one court would bring  
24 about an anomalous situation and doubtless lead to much  
25 confusion." (Ibid., citations and internal quotation  
26 marks omitted.) Therefore, " [o]ne department of the  
27 superior court cannot enjoin, restrain or otherwise  
28 interfere with the judicial act of another department in  
the [same court]." (Ford v. Superior Court (1986) 188  
Cal.App.3d 737, 742, 233 Cal.Rptr. 607; Curtin v.  
Koskey (1991) 231 Cal.App.3d 873, 282 Cal.Rptr. 706.

(Ibid.)

Since the issue of the illegality of the contract at issue  
here is already being litigated in another department of this  
Court, as well as in an interlocutory appeal, this Department of  
the Court does not have jurisdiction to proceed on the complaint.



1           B.    THIS ACTION IS BARRED BY COLLATERAL ESTOPPEL  
2               BECAUSE THE CLAIMS MADE BY PLAINTIFF HERE WERE  
3               ALREADY RAISED BY PLAINTIFF AND REJECTED BY THE  
4               COURT IN ARMSTRONG II

5           In the course of Armstrong II, Scientology's motion for a  
6           preliminary injunction sought to enforce the entirety of the  
7           settlement agreement. (Motion for Preliminary Injunction, Exhibit  
8           A-7, at p. 15, incorporated herein by reference.) Its motion was  
9           only partially granted inasmuch as the Court enjoined Armstrong  
10          from voluntarily executing declarations in favor of private  
11          litigants pursuing claims against Scientology. (Preliminary  
12          Injunction, Exhibit A-3, at p. 2, incorporated herein by  
13          reference.) Scientology's motion for an injunction based upon  
14          Armstrong's exercise of his First Amendment right to free speech  
15          was denied. Since Scientology did not appeal from Judge  
16          Sohigian's partial grant and denial of its injunction, it is  
17          estopped from seeking to relitigate the same before this Court.

18          The claim by Scientology in this action that it is entitled  
19          to enforce the settlement contract against Armstrong is barred by  
20          the doctrine of collateral estoppel, which prevents plaintiff from  
21          re-litigating issues which were or could have been raised.

22          (Clemente v. State (1985) 40 Cal.3d 202, 222, 219 Cal.Rptr. 445.)

23           C.    THIS ACTION IMPROPERLY SPLITS THE CAUSE  
24               OF ACTION BEING LITIGATED IN ARMSTRONG II

25  
26          An additional reason why Scientology is not likely to prevail  
27          in its complaint is due to the fact that it splits the cause of  
28          action that it has pleaded in Armstrong II. Indeed, as noted, the



1 subject matter between the two lawsuits is almost identical.

2 In Wulfen v. Dolton (1944) 24 Cal.2d 891, 894, 151 P.2d 840,  
3 the Supreme Court held:

4 It is clearly established that a party may not  
5 split up a single cause of action and make it the basis  
6 of separate suits, and in such case the first action may  
7 be pleaded in abatement of any subsequent suit on the  
8 same claim. [Citations.] The rule against splitting a  
9 cause of action is based upon two reasons: (1) That  
10 defendant should be protected against vexatious  
11 litigation; and (2) that it is against public policy to  
12 permit litigants to consume the time of the courts by  
13 relitigating matters already judicially determined, or  
14 by asserting claims which properly should have been  
15 settled in some prior action. [Citation.] "It is not  
16 the policy of the law to allow a new and different suit  
17 between the same parties, concerning the same subject  
18 matter, that has already been litigated. Neither will  
19 the law allow the parties to trifle with the court by  
20 piecemeal litigation."

21 (Accord: Steigerwald v. Godwin (1956) 144 Cal.App.2d 591, 301  
22 P.2d 386, 389-390.)

23 Code of Civil Procedure section 1047 allowing for successive  
24 actions upon the same contract does not control when the second  
25 action involves the same cause of action as the first, that is,  
26 whether or not the settlement contract is enforceable. The reason  
27 for this is that a "final adjudication of such issue in the first  
28 case will be a bar to the same issue in the second, and that is  
the test for determining whether or not the identity of the matter  
involved in both actions is the same." (Dodge v. Superior Court  
(1934) 139 Cal.App. 178, 33 P.2d 695, 696.)

For this reason as well, Scientology is not likely to prevail  
in the action at bar.



1           D.     **THIS ACTION IS PART OF PLAINTIFF'S LITIGATION**  
2                   **STRATEGY TO USE THE COURTS TO HARASS ITS OPPONENTS.**

3  
4           Scientology embraces the use of litigation to harass its  
5 opponents. Its founder, L. Ron Hubbard, has described this  
6 practice as follows:

7           The purpose of the suit is to harass and discourage rather  
8 than to win. [¶] The law can be used very easily to harass,  
9 and enough harassment on somebody who is simply on the thin  
edge anyway...will generally be sufficient to cause his  
professional decease. If possible, of course, ruin him  
utterly. <sup>13/</sup>

10          Vicki Aznaran, who was one of the highest worldwide officials  
11 of Scientology, states in her declaration:

12           Hubbard writings encourage Scientologists to pursue  
13 litigation purely for harassment without regard to the  
14 merits of a claim to cause enemies to fold. It is the  
15 stated policy and practice of Scientology to use the  
16 legal system to abuse and harass its enemies. The policy  
17 is to do anything and everything possible to harass the  
opposing litigant without regard to whether any  
particular motion or maneuver is appropriate or  
warranted by the facts or applicable law. That policy  
was followed in every legal case I was involved with or  
learned about while a member of the Sea Organization.

18  
19           <sup>13</sup>From L. Ron Hubbard, The Technical Bulletins of Dianetics  
20 and Scientology, Volume II, p. 157. A copy of the relevant  
portion of this document is attached as Exhibit 2 to, and is  
authenticated by, Armstrong Decl., Ex. B, ¶ 22.

21           Top Scientology official Jane Kember, in an internal  
22 Scientology document, explained that Scientology legal strategy in  
the U.S. is to use litigation as a financial club:  
23 "The button used in effecting settlement is purely financial. In  
other words, it is more costly to continue the legal action than  
24 to settle in some fashion. ... [¶] Therefore, it is imperative  
that legal US Dev-T his opponents and their lawyers with  
correspondence (a lawyer's letter costs approx \$50), phone calls  
25 (time costs), interrogatories, depositions and whatever else legal  
can mock up. [¶] One of the bright spots of US legal is that  
26 even if you lose you don't pay your opponent for his lawyers  
fees." A copy of the document containing this statement is  
attached as Exhibit B to, and is authenticated by, Armstrong  
27 Decl., Ex. B, ¶ 23. The phrase "Dev-T" is a term which  
Scientology uses to mean to cause someone to do unnecessary work.  
28 Id.



1 The management of Scientology consistently expressed and  
2 demonstrated a complete disdain for the court system,  
3 viewing it as nothing more than a method to harass  
4 enemies.

5 (Aznaran Decl., Ex. C, ¶ 7; see also Armstrong Decl., Ex. B, ¶¶  
6 22-24.)

7 Scientology's use of litigation to harass opponents <sup>14/</sup> is  
8 essentially an application of its "Fair Game" doctrine. Under  
9 this doctrine, enemies of Scientology can be "deprived of property  
10 or injured by any means by any Scientologist" or "tricked, sued or  
11 lied to or destroyed." (See footnote 8, supra.)

12 As found by both the trial and appellate courts, Armstrong  
13 has himself been a victim of the Scientology litigation harassment  
14 strategy, of which this action is a part. This includes being  
15 subjected to a 30-day trial in Armstrong I, harassment of his  
16 counsel which ultimately resulted in the settlement contracts with  
17 almost all adverse parties and witnesses. (Aznaran Decl. Ex. C at  
18 ¶ 14; Armstrong Decl. Ex. B at ¶¶ 10-16.) <sup>15/</sup>

19 <sup>14</sup> In Church of Scientology of California v. Cazares (5  
20 Cir. 1981) 638 F.2d 1272, 1290, the court ruled that the civil  
21 rights action filed by Scientology against the Mayor of  
22 Clearwater, Florida, "was frivolous, unreasonable and groundless.  
23 In Church of Scientology of California v. McLean (5 Cir. 1980) 615  
24 F.2d 691, 693, Scientology moved to disqualify one of defendants'  
25 attorneys in a slander suit it had filed; the court found  
26 Scientology's position "not only without merit but frivolous." In  
27 Church of Scientology of California v. Siegelman (USDC, SDNY 1979)  
28 475 F.Supp. 950, 951, the court referred to "the litigious Church  
of Scientology".

29 <sup>15</sup> Joseph A. Yanny, former counsel for Scientology, has  
30 testified that as such counsel he "f) . . . also became aware of a  
31 plot to obstruct Justice or at least perpetuate a fraud on the  
32 Courts in the form of settlement agreements of numerous pieces of  
33 Cult Litigation, which required that the lawyers never take  
34 litigation against the Cult in the future, that no-one (lawyers or  
35 parties) testify against the Cult, and that all evidence and files  
36 be turned over to the Cult for destruction. [¶] g) Additionally, I  
37 (continued...)



1           E.     **PLAINTIFF HAS UNCLEAN HANDS AND IS NOT**  
2                   **ENTITLED TO THE EQUITABLE RELIEF SOUGHT.**

3  
4           This lawsuit seeks equitable relief, which should be denied  
5 because plaintiff has unclean hands.

6           "Under the 'unclean hands' doctrine, a party is barred from  
7 relief if he has engaged in any unconscientious conduct  
8 directly related to the transaction or matter before the  
9 court."

10          (DeRosa v. Transamerica Title Insurance Co. (1989) 213 Cal.App.3d  
11 1390, 1395, 262 Cal.Rptr. 370.)

12          Here, as demonstrated above and in the footnote, plaintiff  
13 Scientology has engaged in abusive and unconscientious conduct  
14 directly related to Armstrong I, the cross-complaint of which was  
15 settled and upon which this lawsuit is based. This includes  
16 attempting to deprive defendant of his right to free speech and to  
17 petition the government through use of litigation to harass him,  
18 falsification/ concealment of crucial evidence, <sup>15/</sup> improper  
19 attempts to conduct discovery pertinent to Armstrong II, which  
20 Department 30 has stayed, and subjecting him to the "Fair Game"  
21 policy. Therefore, equitable relief should be denied because of  
22 plaintiff's unclean hands.

23                   <sup>15</sup>(...continued)  
24 became aware that witnesses such as Bill Franks and others signed  
25 contracts to keep quiet about what they knew. in other words they  
26 were paid hush money." (Yanny Decl., Exhibit D at p. 33:14-23)

27                   <sup>16</sup> Vicki Aznaran, then the top ecclesiastical authority  
28 within Scientology, states under penalty of perjury that after the  
judge in Armstrong I ordered production of Armstrong's folders,  
she removed contents that might have been damaging to Scientology  
or might have supported Armstrong's claims against Scientology.  
Aznaran Decl., Ex. 2, 4:22-5:8.



1 **IV. CONCLUSION**

2  
3 Defendant's special motion to strike falls squarely within  
4 the scope of § 425.16. Plaintiff's action arises from defendant's  
5 exercise of his First Amendment right to petition the government  
6 by filing a lawsuit. Plaintiff cannot meet its burden of  
7 establishing a probability that it will prevail in the action, for  
8 the reasons set forth above. Defendant's special motion to strike  
9 should therefore be granted and defendant should be awarded his  
10 attorneys' fees and costs. <sup>17</sup>/

11  
12 DATED: September 13, 1993

13  
14  
15 HUB LAW OFFICES

16  
17  
18 By: 

19 FORD GREENE  
20 Attorney for Defendants  
21 GERALD ARMSTRONG and THE  
22 GERALD ARMSTRONG CORPORATION  
23  
24

25 <sup>17</sup> Section 425.16 (c) provides that a prevailing defendant  
26 on a special motion to strike "shall be entitled to his or her  
27 attorney's fees and costs." This language is mandatory.  
28 Defendant should therefore be awarded his fees and costs, which  
will be established by separately noticed motion if attempts at  
informal resolution of this matter do not succeed.